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RIGHT OF WAY OCCUPANCY CONSENT AGENDA FOR GOVERNING BOARD APPROVAL

FEBRUARY 11, 2010

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| Governing Board action is required on petitions received requesting a waiver of District criteria. Section 120.542, F.S. and Rule 28-104.002, F.A.C., requires agencies to <u>grant variances and waivers</u> to their own rules when a person subject to the rules files a petition and demonstrates that he or she can achieve, or has achieved, the purpose of the underlying statute by other means <u>and</u> when application of rule would create a substantial hardship or would violate principles of fairness. A "substantial hardship" is defined as a demonstrated economic, technological, legal or other type of hardship to the person requesting the waiver. "Principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule. A "waiver" is defined as an agency decision not to apply all or part of a rule to the person subject to the rule. | |

RIGHT OF WAY OCCUPANCY NEW PERMITS

1. FAYE BRUNER Permit Number 13574
Broward County Appl. No. 09-1118-1
(Fee)

AUTHORIZING: 100 LINEAR FEET OF EXISTING CONCRETE BULKHEAD AND MAINTENANCE OF EXISTING DOCK, INCLUDING REPLACEMENT OF DECK, WITHIN THE SOUTHEAST RIGHT OF WAY OF C-14 AT THE REAR OF 1240 SE 3RD TERRACE (LOT 13, BLOCK 9, CYPRESS HARBOR 1ST SECTION).

LAST DATE FOR BOARD ACTION: MARCH 11, 2010

2. RHONDA M. EATON Permit Number 13585
Palm Beach County Appl. No. 09-1204-2
(Fee)

AUTHORIZING: EXISTING DOCK WITH STAIRS, PAVER WALKWAY, PORTION OF DECK LOCATED 56' FROM THE TOP OF CANAL BANK (ENCROACHING 4' ONTO THE RIGHT OF WAY), PROPOSED FENCE LOCATED 44' FROM TOP OF CANAL BANK (ENCROACHING 14' ONTO THE RIGHT OF WAY); EXISTING LANDSCAPE LIGHTING LOCATED WITHIN PROPOSED FENCED AREA AND RIP RAP LOCATED WITHIN THE NORTH RIGHT OF WAY OF THE HILLSBORO CANAL AT THE REAR OF 6004 VISTA LINDA LANE (LOT 15, BLOCK 1, BUENA VISTA).

LAST DATE FOR BOARD ACTION: MARCH 11, 2010

3. DEAN ZEHNTER Permit Number 13588
Palm Beach County Appl. No. 09-1106-2
(Easement)

AUTHORIZING: EXISTING DOCK WITH STAIRS, CATWALK DECKING, BOAT LIFT, ELECTRICAL SERVICE WITH LIGHTING AND A FISH CLEANING TABLE WITH WATER SERVICE; ALSO, PAVER WALKWAY LOCATED WITHIN THE SOUTH RIGHT OF WAY OF C-51 AT THE REAR OF 8491 WHISPERING OAKS WAY (LOT 13, WHISPERING OAKS).

LAST DATE FOR BOARD ACTION: FEBRUARY 11, 2010

4. VILLAGE OF EL PORTAL Permit Number 13510
Miami-Dade County Appl. No. 08-0415-1
(Easement)

AUTHORIZING: REMOVAL OF EXISTING SEAWALLS AND STRUCTURES, AND CONSTRUCTION OF A NEW SEAWALL WITH STEPDOWNs ALONG THE NORTH RIGHT OF WAY OF C-7 BEGINNING IMMEDIATELY EAST OF I-95 AND ENDING AT NORTH MIAMI AVENUE.

LAST DATE FOR BOARD ACTION: FEBRUARY 11, 2010

RIGHT OF WAY OCCUPANCY PERMIT MODIFICATIONS

1. WILLIAM P & KIMBERLY B MITCHELL Permit Number 12389
Palm Beach County Appl. No. 09-1120-3M
(Easement)

AUTHORIZING: EXISTING ELECTRICAL AND WATER SERVICE TO EXISTING, PREVIOUSLY-AUTHORIZED DOCK WITHIN THE NORTH RIGHT OF WAY OF C-51 AT THE REAR OF 216 ARLINGTON ROAD (LOT 30, LEWIS SHORE ESTATES)

LAST DATE FOR BOARD ACTION: FEBRUARY 11, 2010

2. PAUL H. & NANCY L. SILVIS Permit Number 13023
St. Lucie County Appl. No. 09-1130-3M
(Easement)

AUTHORIZING: EXISTING LIFT WITH BURIED ELECTRICAL SERVICE TO EXISTING, PREVIOUSLY-AUTHORIZED DOCK WITHIN THE EAST RIGHT OF WAY OF C-23A AT THE REAR OF 169 SE FIORE BELLO (LOT 26, BLOCK 11, WATERFORD/TESORO).

LAST DATE FOR BOARD ACTION: FEBRUARY 11, 2010

3. THOMAS CONTE Permit Number 13566
Broward County Appl. No. 09-1124-1M
(Fee)

AUTHORIZING: EXISTING LANDSCAPING CONSISTING OF TREES ENCROACHING APPROXIMATELY 5' (40' FROM THE TOP OF CANAL BANK) WITHIN THE NORTH RIGHT OF WAY OF C-14 AT THE REAR OF 150 SW 121ST TERRACE (LOT 16, BLOCK K, WEST GLEN).

LAST DATE FOR BOARD ACTION: FEBRUARY 11, 2010

**RIGHT OF WAY OCCUPANCY PERMIT REQUESTS WITH
WAIVER OF DISTRICT CRITERIA**

1. Consideration of a request by **Palm Beach County** (Application Number 09-1210-2M, Permit (MOD) Number 11178) for issuance of a modification to Right of Way Occupancy Permit Number 11178 and a Waiver of the District's Criteria to allow the construction of an above-ground canal water pump station (48' from the top of the canal bank) within the northerly right of way of the Hillsboro Canal located approximately 1000' west of SR 7. The proposed pump station is in conjunction with Palm Beach County Water Utilities/Southwest Boca Diversion and Impoundment Project. Location: Palm Beach County, Section 36, Township 47 South, Range 41 East.

The applicant's request for waiver of the District's Criteria which governs the construction of above-ground permanent encroachments within the District's right of way and the present or future construction, alteration, operation or maintenance of the Works or Lands of the District and the general and specific criteria in the Basis for Review is based on "Substantial Hardship". The applicant asserts that the construction of the buried pump station that was previously authorized would increase the County's construction and operation costs compared to an above-ground station.

The District's Operations Maintenance Resource Management staff has determined that the proposed change in design will not significantly interfere with the District's access and ability to perform necessary construction, alteration, operation and maintenance activities, so the purpose of the underlying statute will be achieved.

The applicant's petition has been reviewed by the Office of Counsel for compliance with the applicable legal requirements. Pursuant to Section 120.542(6), F.S., notice of the petition was provided to the Department of State and was published in *Volume 35, Number 52 of the Florida Administrative Weekly on December 31, 2009*. No public comments were received.

Therefore, staff recommends **approval** of the issuance of a Modification to Right of Way Occupancy Permit Number 11178 and **approval** of the petition for Waiver of the District's criteria which governs the present, or future construction, alteration, operation or maintenance of the Works or Lands of the District and general and specific criteria in the Basis for Review to allow the placement of the above-ground pump station within Works or Lands of the District.

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2. Consideration of a request by **Miami-Dade County, Office of Public Transportation Management**, (Application Number 09-0708-2M, Permit (MOD) Number 9884) for the issuance of a Modification to Right of Way Occupancy Permit Number 9884 and waiver of the District's criteria to allow 2 existing culvert connections within the C-103 canal in conjunction with the Busway Extension to Florida City to remain. Location: Miami-Dade County, Section 5, Township 57 South, Range 39 East.

The applicant's request for waiver of the District's criteria which governs the maximum invert elevation of culvert connections requiring that the crown elevation be a minimum of ½ foot below the design water surface or optimum

water surface elevation whichever is lower within Works or Lands of the District. The applicant's request for waiver of the District's criteria is based on Principles of Fairness. The applicant asserts that due to dense rocky soil, field adjustments and accommodations were made during the culvert installations. Applicant also states that although some adjustments were made, there were not discrepancies found on the upstream system which provides the required retention for water quality. The District's Operations Resource Management staff has determined that the proposed use will not significantly interfere with the District's access and ability to perform necessary construction, alteration, operation and maintenance activities, so the purpose of the underlying statute will be achieved.

The applicant's petition has been reviewed by the Office of Counsel for compliance with the applicable legal requirements. Pursuant to Section 120.542(6), F.S., notice of the petition was provided to the Department of State and was published in *Volume 35, Number 31* of the Florida Administrative Weekly on July 13, 2009. No public comments were received.

Therefore, staff recommends **approval** of the issuance of a Modification to Right of Way Occupancy Permit 9884 and **approval** of the petition for Waiver of the District's criteria which governs the invert elevation of culverts within Works or Lands of the District.
(Easement)

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3. Consideration of a request by **Miami-Dade County, Office of Public Transportation Management**, (Application Number 09-0708-3M, Permit (MOD) Number 9885) for waiver of the District's criteria to allow four (4) existing culvert connections (previously authorized) within the C-103N Canal in conjunction with the Busway Extension to Florida City to remain. Location: Miami-Dade County, Section 5, Township 57 South, Range 39 East.

The applicant's request for waiver of the District's criteria which governs the maximum invert elevation of culvert connections requiring that the crown elevation be a minimum of ½ foot below the design water surface or optimum water surface elevation whichever is lower within Works or Lands of the District. The applicant's request for waiver of the District's criteria is based on Principles of Fairness. The applicant asserts that due to dense rocky soil, field adjustments and accommodations were made during the culvert installations. Applicant also states that although some adjustments were made, there were not discrepancies found on the upstream system which provides the required retention for water quality. The District's Operations Resource Management staff has determined that the proposed use will not significantly interfere with the District's access and ability to perform necessary construction, alteration, operation and maintenance activities, so the purpose of the underlying statute will be achieved.

The applicant's petition has been reviewed by the Office of Counsel for compliance with the applicable legal requirements. Pursuant to Section 120.542(6), F.S., notice of the petition was provided to the Department of State and was published in *Volume 35, Number 31* of the Florida Administrative Weekly on July 13, 2009. No public comments were received.

Therefore, staff recommends **approval** of the issuance of a Modification to Permit Number 9885 and approval of the petition for Waiver of the District's criteria which governs the invert elevation of culverts within Works or Lands of the District.

(Easement)

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4. Consideration of a request by Miami-Dade County Public Works (Application Number 09-1201-1, Permit Number 13573) for issuance of a Right of Way Occupancy Permit and waiver of the District's criteria for the proposed installation of approximately 1000 feet of guardrail, 6 feet inside the northerly right of way of the C-1W canal (approximately 39' from top of bank) adjacent to SW 212nd Street between SW 119th Avenue to SW 117th Court. Location: Miami-Dade County, Section 12, Township 56 South, Range 39 East.

The applicant's request for waiver of the District's criteria which governs the placement of permanent and/or semi-permanent above-ground facilities within 40 feet of the top of the canal bank within Works or Lands of the District is based on "substantial hardship". The applicant asserts that in order to protect vehicular traffic and meet the Florida Department of Transportation clearance safety requirements from the edge of the road, the guardrail would fall within approximately 6' of the District's northerly right of way along C-1W. However, the county will incorporate access openings at locations coordinated with District staff to ensure that the District maintenance operations of the canal will not be affected. The District's Operations Resource Management staff has determined that the proposed use will not significantly interfere with the District's access and ability to perform necessary construction, alteration, operation and maintenance activities, so the purpose of the underlying statute will be achieved.

The applicant's petition has been reviewed by the Office of Counsel for compliance with the applicable legal requirements. Pursuant to Section 120.542(6), F.S., notice of the petition was provided to the Department of State and was published in *Volume 35, Number 51* of the Florida Weekly on *December 24, 2009*. No public comments were received.

Therefore, staff recommends **approval** of the issuance of Right of Way Occupancy Permit Number 13573 and **approval** of the petition for Waiver of the District's criteria which governs the placement of permanent and/or semi-permanent above-ground facilities within 40 feet of the top of canal bank with Works or Lands of the District.

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5. Consideration of a request by **Miami-Dade County Public Works** (Application Number 09-1217-1, Permit (MOD) Number 12603) for issuance of a modification to Right of Way Occupancy Permit Number 12603 and waiver of the District's criteria to allow the construction of an above-ground canal water level recorder located approximately 25' from the top of the canal bank within the northerly right of way of C-4 easterly of SW 120th Avenue. Location: Miami-Dade County, Section 1, Township 54 South, Range 39 East.

The applicant's request for waiver of the District's criteria which governs the placement of permanent and/or semi-permanent above-ground facilities within 40

feet of the top of the canal bank within Works or Lands of the District is based on "substantial hardship". The applicant asserts that the water control structure is essential to the operation of the County's Belen Pump Station (located outside the District's right of way) because it provides an automatic shut off of the Pump Station, which discharges into the C-4 Canal. This shut off has been requested by the SFWMD as part of the Memorandum of Understanding. It also provides a water level recorder which operates without the need of power and is essential to determine the levels of the canal in case of power interruption. In addition, the County is unable to relocate elsewhere because the land use of the area is residential and the optimum location for the water structure was established during the design phase due to utility conflicts. The District's Operations Resource Management staff has determined that the proposed use will not significantly interfere with the District's access and ability to perform necessary construction, alteration, operation and maintenance activities, so the purpose of the underlying statute will be achieved.

The applicant's petition has been reviewed by the Office of Counsel for compliance with the applicable legal requirements. Pursuant to Section 120.542(6)F.S., notice of the petition was provided to the Department of State and was published in *Volume 36, Number 2* of the *Florida Administrative Weekly* on *January 15, 2010*. No public comments were received.

Therefore, staff recommends **approval** of the issuance of a Modification to Right of Way Occupancy Permit Number 12603 and **approval** of the petition for Waiver of the District's criteria which governs the placement of permanent and/or semi-permanent above-ground facilities within 40 feet of the top of canal bank within Works or Lands of the District.
(Easement)

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6. Consideration of a request by **Miami-Dade Water and Sewer Department**, (Application Number 09-0115-1, Permit Number 13511), for waiver of District criteria and issuance of a Right of Way Occupancy Permit for the proposed installation of a buried, parallel run, 42" reclaimed water main transmission line within the C-1 rights of way beginning at Old Cutler Road to SW 97th Avenue (approximately 1.5 miles) and within the C-1W rights of way from SW 127th Avenue to the Homestead Extension of the Florida Turnpike (approximately 2.25 miles). Location: Miami-Dade County, Sections 12, 7, 8, 17, & 20, Township 56 South, Range 39 & 40 East.

The applicant's request for waiver of the District's criteria which governs the utilization of the District's rights of way for the placement of parallel run transmission lines and requires applicants to acquire their own right of way for such installations is based on "substantial hardship". The applicant asserts that there is no other feasible, cost-effective alternative route in which to place the reclaimed water transmission line due to existing roads and infrastructure in a highly urbanized area. The applicant has designed the project so the utility transmission line will be installed as close to the canal rights of way lines as possible. In addition, the proposed project is consistent with the District's Alternative Water Supply Program as water re-use is an integral part of the District's efforts to manage water resources. The District's Operations Resource Department staff has reviewed the applicant's proposal and site conditions and

has determined that the proposed facilities will not interfere with the District's current ability to perform necessary construction, alteration, operation and maintenance activities, so the purpose of the underlying statute will be achieved.

The applicant's petition has been reviewed by the Office of Counsel for compliance with the applicable legal requirements. Pursuant to section 120.542(6), F.S., notice of the petition was provided to the Department of State and published in *Volume 35, Number 13* of the *Florida Administrative Weekly* on April 3, 2009. No public comments were received.

Therefore, staff recommends **approval** of the issuance of Right of Way Occupancy Permit Number 13511 and **approval** of the petition for waiver which governs the placement of parallel transmission lines within Works or Land of the District.

(Fee and Easement)

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7. Consideration of a request by the **Miami-Dade County Park & Recreation Department**, (Application Number 09-0311-6M, Permit Modification Number 8026) for issuance of a Modification to Right of Way Occupancy Permit 8026 and waiver of District criteria for the proposed addition of a fishing platform with walkway and appurtenances within the north right of way of C-1 as part of the County's Biscayne Trail located approximately 200' downstream of District Water Control Structure S-21. Location: Miami-Dade County, Section 22, Township 56 South, Range 41 East.

The applicant's request for Waiver of District criteria, which governs the placement of semi-permanent/permanent above-ground facilities within 40 feet of the top of canal bank within Works or Lands of the District, is based on "principles of fairness". Approximately 500 feet downstream of the proposed fishing platform is an existing recently constructed fishing pier. The design of the proposed fishing platform has been coordinated with the District's Operations Maintenance Resource staff, which has determined that the proposed improvements will not significantly interfere with the District's current ability to perform necessary construction, alteration, operation and routine maintenance activities, so the purpose of the underlying statute will be achieved.

The applicant's petition has been reviewed by the Office of Counsel for compliance with the applicable legal requirements. Pursuant to section 120.542(6), F.S., notice of the petition was provided to the Department of State and was published in *Volume 35, Number 37* of the *Florida Administrative Weekly* on September 18, 2009. No public comments were received.

Therefore, staff recommends **approval** of the issuance of a Modification of Right of Way Occupancy Permit Number 8026 and **approval** of the Petition for Waiver of the District's criteria which governs the placement of semi-permanent/permanent above-ground facilities within 40 feet of the top of canal bank within Works or Lands of the District.

(Fee & Easement)

